

amount of such distribution the portion thereof allocable to capital account.

(d) For the purposes of this section, the terms *reorganization* and *party to the reorganization* shall, for any taxable year beginning before January 1, 1934, have the meanings assigned to such terms in section 112 of the Revenue Act of 1932 (47 Stat. 196); for any taxable year beginning after December 31, 1933, and before January 1, 1936, have the meanings assigned to such terms in section 112 of the Revenue Act of 1934 (48 Stat. 704); for any taxable year beginning after December 31, 1935, and before January 1, 1938, have the meanings assigned to such terms in section 112 of the Revenue Act of 1936 (49 Stat. 1678); for any taxable year beginning after December 31, 1937, and before January 1, 1939, have the meanings assigned to such terms in section 112 of the Revenue Act of 1938 (52 Stat. 485); and for any taxable year beginning after December 31, 1938, and ending before June 22, 1954, providing no election is made under section 393(b)(2) of the Internal Revenue Code of 1954, have the meanings assigned to such terms in section 112(g)(1) of the Internal Revenue Code of 1939.

§ 1.312-12 Distributions of proceeds of loans guaranteed by the United States.

(a) The provisions of section 312(j) are applicable with respect to a loan, any portion of which is guaranteed by an agency of the United States Government without regard to the percentage of such loan subject to such guarantee.

(b) The application of section 312(j) is illustrated by the following example:

Example. Corporation A borrowed \$1,000,000 for the purpose of construction of an apartment house, the cost and adjusted basis of which was \$900,000. This loan was guaranteed by an agency of the United States Government. One year after such loan was made and after the completion of construction of the building (but before such corporation had received any income) it distributed \$100,000 cash to its shareholders. The earnings and profits of the taxable year of such corporation are increased (pursuant to section 312(j)) by \$100,000 immediately prior to such distribution and are decreased by \$100,000 immediately after such distribution. Such decrease, however, does not reduce the earnings and profits below zero. Two years later,

it has no accumulated earnings and has earnings of the taxable year of \$100,000. Before it has made any payments on the loan, it distributes \$200,000 to its shareholders. The earnings and profits of the taxable year of the corporation (\$100,000) are increased by \$100,000, the excess of the amount of the guaranteed loan over the adjusted basis of the apartment house (calculated without adjustment for depreciation). The entire amount of each distribution is treated as a distribution out of earnings and profits and, accordingly, as a taxable dividend.

§ 1.312-15 Effect of depreciation on earnings and profits.

(a) *Depreciation for taxable years beginning after June 30, 1972*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph and paragraph (c) of this section, for purposes of computing the earnings and profits of a corporation (including a real estate investment trust as defined in section 856) for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for all property for which depreciation is allowable for each taxable year beginning after June 30, 1972. Thus, for taxable years beginning after June 30, 1972, in determining the earnings and profits of a corporation, depreciation must be computed under the straight line method, notwithstanding that in determining taxable income the corporation uses an accelerated method of depreciation described in subparagraph (A), (B), or (C) of section 312(m)(2) or elects to amortize the basis of property under section 169, 184, 187, or 188, or any similar provision.

(2) *Exception.* (i) If, for any taxable year beginning after June 30, 1972, a method of depreciation is used by a corporation in computing taxable income which the Secretary or his delegate has determined results in a reasonable allowance under section 167(a) and which is not a declining balance method of depreciation (described in § 1.167(b)-2), the sum of the years-digits method (described in § 1.167(b)-3), or any other method allowed solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167, then the adjustment to earnings and profits for

depreciation for such year shall be determined under the method so used (in lieu of the straight line method).

(ii) The Commissioner has determined that the “unit of production” (see §1.167(b)-0(b)), and the “machine hour” methods of depreciation, when properly used under appropriate circumstances, meet the requirements of subdivision (i) of this subparagraph. Thus, the adjustment to earnings and profits for depreciation (for the taxable year for which either of such methods is properly used under appropriate circumstances) shall be determined under whichever of such methods is used to compute taxable income.

(3) *Determinations under straight line method.* (i) In the case of property with respect to which an allowance for depreciation is claimed in computing taxable income, the determination of the amount which would be allowable under the straight line method shall be based on the manner in which the corporation computes depreciation in determining taxable income. Thus, if an election under §1.167(a)-11 is in effect with respect to the property, the amount of depreciation which would be allowable under the straight line method shall be determined under §1.167(a)-11(g)(3). On the other hand, if property is not depreciated under the provisions of §1.167(a)-11, the amount of depreciation which would be allowable under the straight line method shall be determined under §1.167(b)-1. Any election made under section 167(f), with respect to reducing the amount of salvage value taken into account in computing the depreciation allowance for certain property, or any convention adopted under §1.167(a)-10(b) or §1.167(a)-11(c)(2), with respect to additions and retirements from multiple asset accounts, which is used in computing depreciation for taxable income shall be used in computing depreciation for earnings and profits purposes.

(ii) In the case of property with respect to which an election to amortize is in effect under section 169, 184, 187, or 188, or any similar provision, the amount which would be allowable under the straight line method of depreciation shall be determined under the provisions of §1.167(b)-1. Thus, the cost or other basis of the property, less

its estimated salvage value, is to be deducted in equal annual amounts over the period of the estimated useful life of the property. In computing the amount of depreciation for earnings and profits purposes, a taxpayer may utilize the provisions of section 167(f) (relating to the reduction in the amount of salvage value taken into account in computing the depreciation allowance for certain property) and any convention which could have been adopted for such property under §1.167(a)-10(b) (relating to additions and retirements from multiple asset accounts).

(b) *Transitional rules—(1) Depreciation.* If, for the taxable year which includes June 30, 1972, (i) the allowance for depreciation of any property is computed under a method other than the straight line method or a method described in paragraph (a)(2) of this section, and (ii) paragraph (a)(1) of this section applies to such property for the first taxable year beginning after June 30, 1972, then adjustments to earnings and profits for depreciation of such property for taxable years beginning after June 30, 1972, shall be determined as if the corporation changed to the straight line method with respect to such property as of the first day of the first taxable year beginning after June 30, 1972. Thus, if an election under §1.167(a)-11 is in effect with respect to the property, the change shall be made under the provisions of §1.167(a)-11(c)(1)(iii), except that no statement setting forth the vintage accounts for which the change is made shall be furnished with the income tax return of the year of change if the change is only for purposes of computing earnings and profits. In all other cases, the unrecovered cost or other basis of the property (less a reasonable estimate for salvage) as of such first day shall be recovered through equal annual allowances over the estimated remaining useful life determined in accordance with the circumstances existing at that time. See paragraph (a)(3)(i) of this section for rules relating to the applicability of section 167(f) in determining salvage value.

(2) *Amortization.* If, for the taxable year which includes June 30, 1972, the basis of any property is amortized

under section 169, 184, 187, or 188, or any similar provision, then adjustments to earnings and profits for depreciation or amortization of such property for taxable years beginning after June 30, 1972, shall be determined as if the unrecovered cost or other basis of the property (less a reasonable estimate for salvage) as of the first day of the first taxable year beginning after June 30, 1972, were recovered through equal annual allowances over the estimated remaining useful life of the property determined in accordance with the circumstances existing at that time. See paragraph (a)(3)(ii) of this section for rules relating to the applicability of section 167(f).

(c) *Certain foreign corporations.* Paragraphs (a) and (b) of this section shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(d) *Books and records.* Wherever different methods of depreciation are used for taxable income and earnings and profits purposes, records shall be maintained which show the depreciation taken for earnings and profits purposes each year and which will allow computation of the adjusted basis of the property in each account using the depreciation taken for earnings and profits purposes.

[T.D. 7221, 37 FR 24746, Nov. 21, 1972]

DEFINITIONS; CONSTRUCTIVE OWNERSHIP
OF STOCK

§ 1.316-1 Dividends.

(a)(1) The term *dividend* for the purpose of subtitle A of the Code (except when used in subchapter L, chapter 1 of the Code, in any case where the reference is to dividends and similar distributions of insurance companies paid to policyholders as such) comprises any distribution of property as defined in section 317 in the ordinary course of business, even though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of either—

(i) Earnings and profits accumulated since February 28, 1913, or

(ii) Earnings and profits of the taxable year computed without regard to the amount of the earnings and profits (whether of such year or accumulated since February 28, 1913) at the time the distribution was made.

The earnings and profits of the taxable year shall be computed as of the close of such year, without diminution by reason of any distributions made during the taxable year. For the purpose of determining whether a distribution constitutes a dividend, it is unnecessary to ascertain the amount of the earnings and profits accumulated since February 28, 1913, if the earnings and profits of the taxable year are equal to or in excess of the total amount of the distributions made within such year.

(2) Where a corporation distributes property to its shareholders on or after June 22, 1954, the amount of the distribution which is a dividend to them may not exceed the earnings and profits of the distributing corporation.

(3) The rule of (2) above may be illustrated by the following example:

Example X and Y, individuals, each own one-half of the stock of Corporation A which has earnings and profits of \$10,000. Corporation A distributes property having a basis of \$6,000 and a fair market value of \$16,000 to its shareholders, each shareholder receiving property with a basis of \$3,000 and with a fair market value of \$8,000 in a distribution to which section 301 applies. The amount taxable to each shareholder as a dividend under section 301(c) is \$5,000.

(b)(1) In the case of a corporation which, under the law applicable to the taxable year in which a distribution is made, is a personal holding company or which, for the taxable year in respect of which a distribution is made under section 563 (relating to dividends paid within 2 1/2 months after the close of the taxable year), or section 547 (relating to deficiency dividends), or corresponding provisions of a prior income tax law, was under the applicable law a personal holding company, the term *dividend*, in addition to the meaning set forth in the first sentence of section 316, also means a distribution to its shareholders as follows: A distribution within a taxable year of the corporation, or of a shareholder, is a dividend to the extent of the corporation's undistributed personal holding company